

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.89704 of 2024

Arising Out of PS. Case No.-741 Year-2024 Thana- Excise P.S. District- Kaimur (Bhabua)

Kamlesh Kumar Son of Dineshwar Singh Resident of Village- New Diliyan,
P.S.- Dehri, Distt.- Rohtas

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sarfraz Ahmad, Advocate

For the Opposite Party/s : Mr.Surendra Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 21-04-2025 Heard Mr.Sarfraz Ahmad, learned counsel for the

petitioner and Mr.Surendra Prasad Singh, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Excise Thana Kaimur P.S.Case No.741 of 2024,FIR dated 24.09.2024 registered for the offences punishable under Sections 30(a),32(i),32(3),41(i) & 41(2) of Bihar Prohibition and Excise Amendment Act, 2018.

3. Recovery is of 18.000 liters of foreign liquor.

4. Learned counsel for the petitioner submits that the petitioner has clean antecedent and he has falsely been implicated in the present case. The allegation as alleged in the FIR is false and fabricated and the petitioner has not committed any offence as alleged in the FIR and nothing has been



recovered from conscious possession of the petitioner rather the recovery has been made from the TVS Apache Motorcycle and petitioner has been made accused in the present case merely on the ground that he is owner of the motorcycle in question. In fact the petitioner had already sold the motorcycle in question to one Sachin Kumar on 18.09.2024 and petitioner has no concern at all with the alleged recovery of illicit liquor or the motorcycle. There is non-compliance with mandatory procedure prescribed for recovery under Section 100 of Cr.P.C./Section 103 of BNSS, 2023. No case, whatsoever, would be made out against the petitioner under the Bihar Prohibition and Excise Act.

5. Learned A.P.P. for the State has vehemently opposed the prayer for bail of the petitioner referring the provision contained in Section 76(2) of the Bihar Prohibition and Excise Act and submitted that the pre-arrest bail would not be maintainable.

6. This Court is aware of the decision of the Full Bench in the case of **Ram Vinay Yadav Vs. State of Bihar** reported in **2019 (2) PLJR 1089**. Having regard to the law laid down in the aforesaid judgment and the submission advanced on behalf of the parties, this Court for the limited purpose of grant



of anticipatory bail, is inclined to accept the submission of Counsel for the petitioner.

7. Considering the aforesaid facts, petitioner has clean antecedent, nothing has been recovered from conscious possession of the petitioner and petitioner has already sold the motorcycle in question to one Sachin Kumar, let the petitioner, above named, in the event of his arrest or surrender before the court below within a period of thirty days from the date of receipt of the order, be released on bail on furnishing bail bond of Rs.10,000 (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge Excise-II, Kaimur, Bhabhua in connection with Excise Thana Kaimur P.S.Case No.741 of 2024, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure/ Section 482(2) of BNSS, 2023 and with other following conditions:-

(I) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court and shall remain physically present as directed by the Court and on his/her absence on two consecutive dates without sufficient reason, his/her bail bond shall be cancelled by the Court below.

(II) If the petitioner tampers with the evidence or the



witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

(III) And, further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage, it is found that the petitioner has concealed his/her criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajesh Kumar Verma, J)

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